is being studied for the rare disease or condition and a summary and analysis of any available data from such studies.

(14) The sponsor's proposal as to the scope of nonclinical and clinical investigations needed to establish the safety and effectiveness of the drug.

(15) Detailed protocols for each proposed United States or foreign clinical investigation, if available.

(16) Specific questions to be addressed by FDA in its recommendations for nonclinical laboratory studies and clinical investigations.

[57 FR 62085, Dec. 29, 1992; 58 FR 6167, Jan. 26, 1993]

### § 316.12 Providing written recommendations.

(a) FDA will provide the sponsor with written recommendations concerning the nonclinical laboratory studies and clinical investigations necessary for approval of a marketing application if none of the reasons described in § 316.14 for refusing to do so applies.

(b) When a sponsor seeks written recommendations at a stage of drug development at which advice on any clinical investigations, or on particular investigations would be premature, FDA's response may be limited to written recommendations concerning only nonclinical laboratory studies, or only certain of the clinical studies (e.g., Phase 1 studies as described in § 312.21 of this chapter). Prior to providing written recommendations for the clinical investigations required to achieve marketing approval, FDA may require that the results of the nonclinical laboratory studies or completed early clinical studies be submitted to FDA for agency review.

### § 316.14 Refusal to provide written recommendations.

(a) FDA may refuse to provide written recommendations concerning the nonclinical laboratory studies and clinical investigations necessary for approval of a marketing application for any of the following reasons:

(1) The information required to be submitted by § 316.10(b) has not been submitted, or the information submitted is incomplete.

(2) There is insufficient information about:

(i) The drug to identify the active moiety and its physical and chemical properties, if these characteristics can be determined; or

(ii) The disease or condition to determine that the disease or condition is rare in the United States; or

(iii) The reasons for believing that the drug may be useful for treating the rare disease or condition with that drug; or

(iv) The regulatory and marketing history of the drug to determine the scope and type of investigations that have already been conducted on the drug for the rare disease or condition; or

(v) The plan of study for establishing the safety and effectiveness of the drug for treatment of the rare disease or condition.

(3) The specific questions for which the sponsor seeks the advice of the agency are unclear or are not sufficiently specific.

(4) On the basis of the information submitted and on other information available to the agency, FDA determines that the disease or condition for which the drug is intended is not rare in the United States.

(5) On the basis of the information submitted and on other information available to the agency, FDA determines that there is an inadequate basis for permitting investigational use of the drug under part 312 of this chapter for the rare disease or condition.

(6) The request for information contains an untrue statement of material fact.

(b) A refusal to provide written recommendations will be in writing and will include a statement of the reason for FDA's refusal. Where practicable, FDA will describe the information or material it requires or the conditions the sponsor must meet for FDA to provide recommendations.

(c) Within 90 days after the date of a letter from FDA requesting additional information or material or setting forth the conditions that the sponsor is asked to meet, the sponsor shall either:

(1) Provide the information or material or amend the request for written